

REMARKS

I. The Pending Claims and the Amendments to the Claims, Drawings, and Specification

With the entry of the amendment set forth above, Claims 22-46 are pending. Claim 22 is the only pending independent claim. There are no amendments to Claims 22-43. Claims 44-46 are newly presented, these claims reciting the polymeric composition of the first layer of the film. Support for newly-presented Claims 44-46 can be found in the specification at, for example, Page 22 lines 13-20 and Page 23 lines 5-11.

The drawings are amended by the addition of Proposed New FIG. 5, which is a schematic of a stack sealing process in which a vacuum chamber (specification at Page 7, lines 19-21) holds a first product which has been placed in first bag and second product which has been placed in second bag (Page 7 lines 3-7), with the resulting bagged products being stacked on top of one another (Page 7 lines 7-9 and 19-21), with excess bag length of each of first bag and second bag positioned on top of one another and within sealing distance of a means for sealing (Page 7 lines 7-13). Applicants point out that “stacking on top of one another”, as disclosed in Applicants’ specification (as originally filed) and as recited in Applicants’ claims (as originally filed), necessarily discloses the arrangement illustrated in newly-proposed FIG. 5. Thus, the drawing illustrates that which the specification already discloses at the pages and lines indicated.

Similarly, Page 8 of the specification is amended to refer to the schematic of New Proposed Figure 5, and Page 34 of the specification is amended by the addition of a generic description of the various features illustrated in Figure 5, including vacuum chamber 172, first product 174, first bag

176, second product 178, second bag 180, with the resulting bagged products being stacked on top of one another, and with excess bag length of each of first bag 176 and second bag 178 positioned on top of one another and within sealing distance of a means for sealing 182, ready for subsequent evacuation and sealing. Support for this paragraph corresponds with the support for the various features of Newly Presented Figure 5, as noted above.

The amendments contain no new matter.

II. The Objection to the Drawings

The drawings are objected to as not showing every feature of the invention specified in the claims, more particularly, as not showing the bags stacked on top of one another when being heat sealed, the rotary chamber vacuum machine and the evacuation of the first and second bags. The Office Action states that these features must be shown or the features canceled from the claims.

In response, Applicants direct attention to Proposed New FIG. 5 and to the accompanying amendments to the specification describing FIG. 5. As such, Applicants contend that their specification, as filed, clearly illustrates the process of using a vacuum chamber in the stack sealing of bagged products. In response to the statement in the Office Action that the drawings must illustrate the rotary chamber vacuum machine, Applicants direct attention to U.S. Patent No. 4,754,596, to Yasumune et al (copy provided herewith), more particularly to Col. 1, lines 12-20, as follows:

It is well known to package foodstuffs such as livestock meat with thermoplastic packaging bags in a vacuum environment. For this purpose, the foodstuffs to be packaged are supplied into a plurality of vacuum

42941-02.A02

chambers disposed on the periphery of a turntable. This type of a vacuum packaging apparatus is called a rotary chamber type. Some of this type of apparatuses are disclosed in U.S. Pat. Nos. 2,630,955, 2,740,243 and 3,598,391.

Applicants contend that rotary chamber vacuum machines are notoriously well known, and that 37 C.F.R 1.83(a) does not require the drawings to include conventional features where their detailed illustration is not necessary for a proper understanding of the invention. As is apparent from the above paragraph from Col. 1 of the '596 patent, it is apparent that at least as far back as 1988 (the issue date of the '596 patent), rotary chamber vacuum packaging machines were well known to those of skill in the art. Additional early prior art documents disclosing rotary chamber vacuum machines can be provided, should the PTO so desire.

III. Claims 22-43 Are Patentable over Applicants' Admission of Prior Art in view of BAUER et al

Applicants contend that Claims 22-43 are patentable over Applicants' Admission of Prior Art (AAPA) in view of U.S. Patent No. 5,837,358, to Bauer et al ("BAUER et al"). Applicants note that while the Office Action refers specifically to Page 2 lines 5-15 of Applicants' specification as the source of AAPA, the Office Action does not identify the specific portion of BAUER et al relied upon for the teaching of a "a bag used in a similar process which meets [Applicants'] claimed structure of the bag".

Thus, Applicants have reviewed BAUER et al in an effort to locate a teaching of a bag which meets Applicants' claimed structure. Applicants note that none of the examples in BAUER et al discloses a film having Applicants' recited third layer which comprises polyester, not to

42941-02.A02

mention the combination of Applicants' recited third layer (which comprises polyester) in combination with Applicants' recited fourth layer, which comprises at least one member selected from the group consisting of polyester, polyamide, polypropylene and polyurethane. None of the films in the examples of BAUER et al have any interior layer comprising polyester.

Applicants admit that BAUER et al discloses that one or more of a wide variety of polymers can be present in various multilayer film constructions. More particularly, Applicants direct attention to the following passages from BAUER et al:

In general, first layer 14 comprises at least one member selected from the group consisting of *polyolefin, polystyrene, polyamide, polyester, polymerized ethylene vinyl alcohol, polyvinylidene chloride, polyether, polyurethane, polycarbonate, and starch-containing polymer*; preferably, at least one member selected from the group consisting of polyolefin; more preferably, at least one member selected from the group consisting of *ethylene .alpha.-olefin copolymer, propylene .alpha.-olefin copolymer, butene .alpha.-olefin copolymer, ethylene vinyl acetate copolymer, ethylene acrylate copolymer, and ethylene acrylic acid copolymer*; still more preferably, *linear low density polyethylene*. [Col 13 lines 22-33, all emphasis added]

In general, second layer 15 comprises at least one member selected from the group consisting of *polyolefin, polystyrene, polyamide, polyester, polymerized ethylene vinyl alcohol, polyvinylidene chloride, polyether, polyurethane, polycarbonate, and starch-containing polymer*; preferably, at least one member selected from the group consisting of polyolefin; more preferably, at least one member selected from the group consisting of *ethylene .alpha.-olefin copolymer, propylene .alpha.-olefin copolymer, butene .alpha.-olefin copolymer, ethylene vinyl acetate copolymer, ethylene acrylate copolymer, ethylene acrylic acid copolymer*; still more preferably, at least one member selected from the group consisting of a blend of 90 weight percent *ethylene vinyl acetate copolymer* (having 6.5 weight percent vinyl acetate) with 10 weight percent *high density polyethylene*. [Col 13 lines 38-52, all emphasis added]

In general, third layer 16 comprises at least one

member selected from the group consisting of *polymerized ethylene vinyl alcohol (EVOH)*, *polyvinylidene chloride*, *polyamide*, and *polyester*; preferably, at least one member selected from the group consisting of *polymerized ethylene vinyl alcohol and polyamide*; more preferably, *polymerized ethylene vinyl alcohol*; still more preferably, *polymerized ethylene vinyl alcohol having about 44 mole percent ethylene*. [Col 13 lines 59-67, all emphasis added]

In general, fifth layer 17 comprises at least one member selected from the group consisting of *polyolefin*, *polyamide*, *polyester*, and *polyurethane*; preferably, at least one member selected from the group consisting of *polyolefin and polyamide*; more preferably, at least one member selected from the group consisting of *ethylene vinyl acetate*, *ethylene .alpha.-olefin copolymer*, *propylene .alpha.-olefin copolymer*, *ethylene acrylate copolymer*, *polyethylene homopolymer*, and *polypropylene homopolymer*; still more preferably, a blend of 80 weight percent *ethylene vinyl acetate* copolymer (having 9 weight percent vinyl acetate) with 20 weight percent *linear low density polyethylene*. [Col 14 lines 25-38, all emphasis added]

As can be seen from the above, each of these passages from BAUER et al lists a very wide variety of polymers for the first, second, third, and fifth layers of the film of BAUER et al. Moreover, it should be noted that polyester is NOT in any one or more of the listings of *preferred* polymers for any one or more of the first, second, third, and fifth layers in BAUER et al.

Applicants admit that when using hindsight based on Applicants teaching, it is in fact possible to construct a film which meets the features of the film recited in Applicants' claims. However, Applicants point out that without the benefit of hindsight, there is no teaching or suggestion in BAUER et al, and no motivation in BAUER et al, to select the combination of polymers which would result in this a film having the features recited in Applicants' claims.

Applicants contend that hindsight based on Applicants specification is needed to arrive at Applicants' claimed invention from AAPA in view of BAUER et al.

In the absence of some teaching or suggestion *in the prior art* to both (1) select the polymers so that the film corresponds with the film recited in Applicants' claims and (2) use the film in the stack sealing process recited in Applicants' claims, no prima facie case of obviousness has been established. For this reason, the rejection of claims 22-43 should be withdrawn.

IV. Claims 44-46 Are Patentable over Applicants' Admission of Prior Art in view of BAUER et al

Applicants contend that Claims 44-46 are patentable over AAPA in view of BAUER et al for all of the reasons pointed out above, and for the additional reason that each of Claims 44-46 recites the composition of the first layer of the film (i.e., the sealant layer) in a manner which excludes the anhydride functional polymer which is a key feature of the film disclosed in BAUER et al. BAUER et al is directed to a film which is used in cook-in packaging, i.e., in which a food product (typically a meat product) is packaged in a film and then cooked while remaining packaged in the film. See Abstract of BAUER et al. BAUER et al teaches the use of a polymer having an anhydride functionality, i.e., an anhydride-modified polymer, which provides for meat adhesion during cook-in, and which also provides an anhydride functionality extractable from the film to a level of less than 50 parts per billion. See Abstract of BAUER et al.

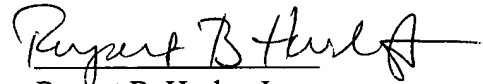
Applicants point out that their claims 44-46 recite the first layer (which is the inside layer of the bag and hence corresponds with the seal layer of BAUER et al) as consisting essentially of one or more polymers which do not include an anhydride modified polymer. As such, BAUER et al

teaches away from any and all films which do not contain the anhydride functionality in the layer of the film which is in contact with the meat product. As such, Claims 44-46 are patentable over AAPA in view of BAUER et al.

V. Conclusion

In view of all of the foregoing amendments and remarks, Applicants respectfully request reconsideration of the patentability of Claims 22-46, with a view towards allowance.

Respectfully submitted,



Rupert B. Hurley Jr

Reg. No. 29,313

(864)433-3247

September 22, 2004

Attachments: U.S. Patent No. 4,754,596, to Yasumune et al.
Proposed New FIG. 5